

Online Reference: FLWSUPP 2709COLE

Criminal law -- Open container -- Possession of cocaine and paraphernalia -- Search and seizure -- Non-criminal violation of municipal ordinance -- Full custodial arrest for violating municipal ordinance prohibiting consumption of alcoholic beverages or possession of open container on public right-of-way was unlawful -- Contraband found in search incident to arrest is suppressed

STATE OF FLORIDA, Plaintiff, v. JIMMIE LEE COLEMAN, Defendant. Circuit Court, 12th Judicial Circuit in and for Sarasota County. Case No. 2019 CF 5818 NC. October 24, 2019. Charles E. Williams, Judge. Counsel: Monica Kelly, Assistant State Attorney, for Plaintiff. Amanda Davey, Assistant Public Defender, for Defendant.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

This matter came before the Court on the Defendant's Motion to Suppress on October 10, 2019. The Court heard testimony of witnesses, argument of counsel, and the court has reviewed the case law and memorandums of law submitted and finds as follows;

ISSUE

The issue in this case is whether the officers who seized the evidence at issue were authorized to conduct a full custodial detention and conduct the search of the defendant that ultimately led to his arrest for the charges at issue.

RELEVANT FACTS

On May 1st, 2019 the investigating officer was conducting a surveillance and observed the defendant sitting at a bus stop. The officer observed the defendant open a bag and pour what apparently was beer, in a styrofoam cup. The defendant then threw the can of beer into a trash can.

The investigation of the contents of the can confirmed the liquid apparently consumed by the defendant was an alcoholic beverage.

The defendant was arrested on a violation of Sarasota City Ordinance 5-21, prohibiting the consumption of alcoholic beverages or possession of an open container on a public right-of-way.

Subsequent to this arrest and search incident to the arrest, the contraband at issue was found and the defendant was charged with Open Container, Possession of Cocaine, and Possession of Paraphernalia.

THE LAW

When a person is charged with violating a municipal ordinance regulating conduct that is noncriminal in nature, a full custodial arrest is unreasonable and a violation of the Fourth Amendment and Art I Sec. 12, of the Florida Constitution. A violation of a municipal ordinance is neither a crime nor a criminal violation. *Nelson v. State*, 268 So.3d 837 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D615a].

RULING AND RATIONALE

The Court finds that the facts and circumstances, including the Sarasota municipal ordinance at issue, runs parallel to the facts in *Nelson*. The Court finds that the *Nelson* case is controlling.

The Motion to Suppress is **GRANTED**.

* * *